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SUBJECT: SUBJECT: Senegal: lenient sentence for ruling party arsonist

11. SUMMARY: On February 3, the Regional Court of Thies condemned Mouhamadou Lamine Massaly, a ruling party youth leader, to six-month in prison. Massaly had confessed to a journalist and a Police chief in Thies that he was the instigator of arson during a Socialist Party (PS) rally on January 17, 2010. The PS, knowing that ruling party leaders generally enjoy immunity in cases of political violence, tried to have him indicted for arson, a felony, but the prosecutor chose a charge of destruction of private property which carries a much more a lenient sentence. This time, however, effective communication by the media forced the government to prosecute the case to avoid the appearance of official involvement in or approval of Massaly's actions. End Summary.

Twisting the prosecutor's arm

12. Mouhamadou Lamine Massaly is leader of the "Jeunesse Wadist" (young supporters of President Abdoulaye Wade) in the city of Thies. To show his loyalty to President Wade he tried to derail the PS's rally in Thies on January 17 by setting fire to the PS's tent. To make sure that he got credit for what he thought would be a bold action, he called both the local police chief and a journalist to claim that he was the instigator of the arson. When the information was made public the police interrogated him but he was set free; a clear indication to many that the PDS was not planning to have him face justice. The PS then filed a complaint directly with the Investigative Judge of Thies ("Juge d'Instruction") asking him to open a case into the arson. Knowing that the judge, by law, has to open an investigation, the Government bypassed him by ordering the Prosecutor of Thies to carry out a swift prosecution to stymie the extensive power of an Investigative Judge who is independent from the Executive branch. By moving first the Prosecutor, who receives his instructions from the Minister of Justice, was in a position to decide which charges to bring and which sentence to seek before the Court. The effect of moving faster than the Investigative Judge was also to neutralize the latter, since the same crime can only be prosecuted by one criminal jurisdiction.

Orchestrated court case

13. If Massaly had been prosecuted for arson, he could have been sentenced to life imprisonment (Article 406 of the Criminal Code). But the head of the Thies Court, made a narrow interpretation of criminal law finding that since only the fabric covering the stand where people were sitting was burnt that the conditions for an arson as enumerated in Article 406 had not been met as Article 406 refers specifically to the burning of homes, aircraft, cars, ships, shops and construction sites. Consequently, he was charged with

destruction of property, an act punishable under Article 98 of the Criminal Code with a sentence of one to five years imprisonment. The prosecutor then requested a sentence of one year imprisonment, six months suspended. The Court finally sentenced Massaly to two year imprisonment, but he will only remain in jail for six months as the remaining one and half year of his sentence was suspended. Massaly's attorneys said that while they were satisfied that their client had not been charged with a felony they would still appeal as they maintain that no clear evidence was ever shown that he was, in fact, the instigator of the attack.

¶4. COMMENT: Senegal has a long history of political violence both against the opposition and internally within a ruling party. It is widely believed that as a result of this history of impunity for political acts of violence in support of the ruling party Massaly felt he risked little by attacking the PS rally. Therefore, Massaly's imprisonment, albeit with the lukewarm consent of the government, as well as the call by religious leaders for non-violence are encouraging signs. That being said the potential for violence in the run up to the 2012 presidential election remains high as the ruling elite knows that they have much to lose in the event that Wade does not win the election. END COMMENT.
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